

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HENRY FROMETA GONZALEZ,

Plaintiff,

v.

JAMES GREG COX et al.,

Defendants.

3:15-cv-00115-RCJ-WGC

**ORDER**

**I. DISCUSSION**

On June 25, 2015, the Court issued a screening order dismissing Plaintiff's complaint in its entirety, with prejudice, for failure to state a claim. (ECF No. 6 at 7). Plaintiff appealed. (ECF No. 9). On December 21, 2016, the Ninth Circuit Court of Appeals affirmed in part, vacated in part, and remanded. (ECF No. 16 at 4). Specifically, the Ninth Circuit vacated the judgment in part and remanded with instructions "to provide [Plaintiff] with an opportunity to file an amended complaint as to the due process claims arising from his placement in segregation, and to address the merits of the due process claim arising from [Plaintiff's] transfer to maximum security prison." (*Id.* at 3). With respect to the transfer, the Ninth Circuit stated that it would not "address the merits of [Plaintiff's] due process claim arising from his transfer to a maximum security prison, which the district court should address in the first instance." (*Id.*)

The Court now grants Plaintiff leave to amend his due process claim arising from his placement in segregation. The Court also addresses and now dismisses with prejudice Plaintiff's due process claim arising from his transfer to a maximum security prison. See *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983) (holding that prisoners have no liberty interest in avoiding being transferred to another prison).

1 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of the  
2 complaint. If Plaintiff chooses to file an amended complaint he is advised that an amended  
3 complaint supersedes (replaces) the original complaint and, thus, the amended complaint  
4 must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896  
5 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original  
6 complaint is irrelevant; an amended pleading supersedes the original”); see also *Lacey v.*  
7 *Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with  
8 prejudice, a plaintiff is not required to reallege such claims in a subsequent amended  
9 complaint to preserve them for appeal). Plaintiff’s amended complaint must contain all claims,  
10 defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover,  
11 Plaintiff must file the amended complaint on this Court’s approved prisoner civil rights form and  
12 it must be entitled “First Amended Complaint.”

13 The Court notes that if Plaintiff chooses to file an amended complaint curing the  
14 deficiencies, as outlined in the Ninth Circuit’s memorandum disposition, Plaintiff shall file the  
15 amended complaint within thirty (30) days from the date of entry of this order. If Plaintiff  
16 chooses not to file an amended complaint curing the stated deficiencies, this action shall be  
17 dismissed with prejudice.

## 18 **II. CONCLUSION**

19 For the foregoing reasons, IT IS ORDERED that the Clerk of the Court SHALL SEND  
20 Plaintiff the approved form application to proceed *in forma pauperis* by a non-prisoner, as well  
21 as the document entitled information and instructions for filing an *in forma pauperis*  
22 application.

23 IT IS FURTHER ORDERED that within thirty (30) days from the date of this order,  
24 Plaintiff shall either: (1) file a fully complete application to proceed *in forma pauperis* for non-  
25 prisoners; or (2) pay the full filing fee of \$400.

26 IT IS FURTHER ORDERED that, if Plaintiff fails to timely file an application to proceed  
27 *in forma pauperis* by a non-prisoner, the Court shall dismiss this case with prejudice.

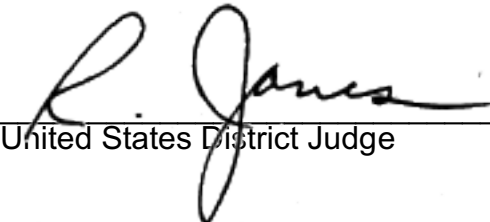
28 IT IS FURTHER ORDERED that, if Plaintiff chooses to file an amended complaint

1 curing the deficiencies of his complaint, as outlined in the Ninth Circuit's memorandum  
2 disposition, Plaintiff shall file the amended complaint within thirty (30) days from the date of  
3 entry of this order.

4 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the  
5 approved form for filing a § 1983 complaint, instructions for the same, a copy of his original  
6 complaint (ECF No. 7), and a copy of the Ninth Circuit's memorandum disposition (ECF No.  
7 16). If Plaintiff chooses to file an amended complaint, he must use the approved form and he  
8 shall write the words "First Amended" above the words "Civil Rights Complaint" in the caption.

9 IT IS FURTHER ORDERED that, if Plaintiff fails to file an amended complaint curing  
10 the deficiencies outlined in the Ninth Circuit's memorandum disposition, this action shall be  
11 dismissed with prejudice.

12 Dated: This 16<sup>th</sup> day of February, 2017.

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16 United States District Judge  
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